

for migratory birds and other wildlife); have the least likelihood of re-conversion and loss of these wildlife values at the end of the WRP enrollment period; and that involve State, local, or other partnership matching funds and participation.

(b) *Ranking considerations.* Based on applications for participation, the State Conservationist, in consultation with the U.S. Fish and Wildlife Service and the State Technical Committee, will rank properties based on: estimated costs of restoration and easement acquisition, availability of matching funds, significance of wetland functions and values, estimated success of restoration measures, and the duration of a proposed easement with permanent easements being given priority over non-permanent easements.

(c) The Department may place higher priority on certain geographic regions of the State where restoration of wetlands may better achieve Department State and regional goals and objectives.

(d) Notwithstanding any limitation of this part, the State Conservationist may enroll eligible lands at any time in order to encompass total wetland areas subject to multiple ownership or otherwise to achieve program objectives. Similarly, the State Conservationist may, at any time, exclude otherwise eligible lands if the participation of the adjacent landowners is essential to the successful restoration of the wetlands and those adjacent landowners are unwilling to participate.

[60 FR 28514, June 1, 1995. Redesignated and amended at 61 FR 42141, 42142, Aug. 14, 1996]

§ 1467.7 Enrollment of easements.

(a) *Offers of enrollment.* Based on the priority ranking, the Department will notify an affected landowner of tentative acceptance into the program for which the landowner has 15 calendar days to sign a letter of intent to continue. Department will select lands to maximize environmental benefits per expenditure of Federal funds.

(b) *Effect of letter of intent to continue (enrollment).* An offer of tentative acceptance into the program does not bind the Department or the United States to acquire an easement, nor

does it bind the landowner to convey an easement or agree to WRPO activities. However, receipt of an executed letter of intent to continue will authorize the Department to proceed.

(c) *Acceptance of offer of enrollment.* A contract will be presented by the Department to the landowner, which will describe the easement area; the easement terms and conditions; and other terms and conditions for participation that may be required by the Department. A landowner accepts enrollment in the WRP by signing contract.

(d) *Effect of the acceptance of the offer.* After the contract is executed by Department and the landowner, the Department will proceed with various easement acquisition activities, which may include conducting a survey of the easement area, securing necessary subordination agreements, procuring title insurance, and conducting other activities necessary to record the easement or implement the WRPO.

(e) *Withdrawal of offers.* Prior to execution by the United States and the landowner of the contract, the Department may withdraw its offer anytime due to availability of funds, inability to clear title, or other reasons. The offer to the landowner shall be void if not executed by the landowner within the time specified. The date of the offer shall be the date of notification to the landowner of tentative acceptance.

[60 FR 28514, June 1, 1995. Redesignated and amended at 61 FR 42141, 42142, Aug. 14, 1996]

§ 1467.8 Compensation for easements.

(a) *Establishment of rates.* (1) The State Conservationist, in consultation with the State Technical Committee, shall determine easement payment rates to be applied to specific geographic areas within the State or to individual easement areas.

(2) In order to provide for better uniformity among States, the Regional Conservationist and Chief may review and adjust, as appropriate, State or other geographically based easement payment rates.

(b) *Determination of easement payment rates.* (1) Easement payment rates will be based upon analyses of the values of the lands when used for agricultural purposes. The landowner will receive the lesser of the following:

- (i) the geographic area rate;
- (ii) the value based on a market appraisal analysis/assessment; or
- (iii) the landowner offer.

(2) Each State Conservationist will determine the easement payment rates using the best information which is readily available in that State for assessing the values of land for agricultural purposes. Such information may include: soil types, type(s) of crops capable of being grown, production history, location, real estate market values, appraisals and market analyses, and tax rates and assessments. The State Conservationist may consult with other Federal agencies, real estate market experts, appraisers, local tax authorities, and other entities or persons which may provide information on productivity and market conditions.

(3) Easement payments for non-permanent easements will be less than those for permanent easements because the quality and duration of the ecological benefits derived from a non-permanent easement are significantly less than those derived from a permanent easement on the same land. Additionally, the economic value of the easement interests being acquired is less for a non-permanent easement than that associated with a permanent easement. An easement payment for the short-term 30-year easement shall not be less than 50 percent nor more than 75 percent of that which would have been paid for a permanent easement.

(c) *Maximum payments.* In order to ensure that limited program funds are expended to maximize program benefits, the State Conservationist, in consultation with the State Technical Committee, may establish a maximum easement payment for any one easement within a State or for geographic areas within a State.

(d) *Preliminary estimates of easement payments.* Upon request of the landowner prior to filing an application for enrollment, a landowner may be appraised of the maximum easement payment rates.

(e) *Acceptance of offered easement compensation.* (1) The Department will not acquire any easement unless the landowner accepts the amount of the easement payment which is offered by the Department. The easement payment

may or may not equal the fair market value of the interests and rights to be conveyed by the landowner under the easement. By voluntarily participating in the program, a landowner waives any claim to additional compensation based on fair market value.

(2) Annual easement payments may be made in no less than 5 annual payments and no more than 30 annual payments of equal or unequal size.

(f) *Reimbursement of a landowner's expenses.* For completed easement conveyances, the Department will reimburse landowners for their fair and reasonable expenses, if any, incurred for surveying and related costs, as determined by the Department. The State Conservationist, in consultation with the State Technical Committee, may establish maximum payments to reimburse landowners for reasonable expenses.

(g) *Tax implications of easement conveyances.* Subject to applicable regulations of the Internal Revenue Service, a landowner may be eligible for a bargain sale tax deduction which is the difference between the fair market value of the easement conveyed to the United States and the easement payment made to the landowner. The Department disclaims any representations concerning the tax implications of any easement or cost-share transaction.

(h) *Payment limitation on non-permanent easements.* With respect to non-permanent easements, the annual amount of easement payments to any person may not exceed \$50,000 except for:

(1) Payments made pursuant to projects involving partnership funding or participation; or

(2) Payment received by a State, political subdivision, or agency thereof in connection with agreements entered into under a special wetland and environmental enhancement program carried out by that entity that has been approved by Department.

(i) If easement payments are calculated on a per acre basis, adjustment to stated easement payment will be made based on final determination of acreage.

[60 FR 28514, June 1, 1995. Redesignated and amended at 61 FR 42141, 42142, Aug. 14, 1996]